

The Obviousness of Anarchy: Uniformity of Rules Of Law - The Art of Not Being Governed

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Continued from [The Obviousness of Anarchy: The Creation of Rules of Law](#)

Supporters of government claim that government is necessary to ensure that there is one law for all and that the law applies equally to all citizens. If the government does not make the law, they contend, there would be no uniform code of laws. People in different locations or with different cultural backgrounds or levels of wealth would be subject to different rules of law.

The proper response to this is probably the one Woody Allen made to Diane Keaton in *Annie Hall* when she complained that her apartment had bad plumbing and bugs, which was: "You say that as though it is a negative thing." How persuasive is the following argument? Government is necessary to ensure that there is one style of dress for all and that all citizens are equally clothed. If the government does not provide clothes, there would be no uniform mode of dress. People in different locations or with different cultural backgrounds or levels of wealth would be clothed in garments of different styles and quality.



Why would anyone think that uniformity in law is any more desirable than uniformity in dress? The quest for uniformity leads us to treat the loving husband who kills his terminally ill wife to relieve her suffering the same way we treat Charles Manson, to apply the same rules of contracting to sophisticated business executives purchasing corporations and semi-literate consumers entering into installment contracts, and to act as though the slum lord in the Bronx and the family letting their spare room in Utica should be governed by the same rules of property law.

There are, of course, certain rules that must apply to all people; those that provide the basic conditions that make cooperative behavior possible. Thus, rules prohibiting murder, assault, theft, and other forms of coercion must be equally binding on all members of a society. But we hardly need government to ensure that this is the case. These rules always evolve first in any community; you would not even have a community if this were not the case.

The idea that we need government to ensure a uniform rule of law is especially crazy in the United States, in which the federal structure of the state and national governments is designed to permit legal diversity. To the extent that the law of the United States can claim any superiority to that produced by other nations, it is at least partially due the fact that it was generated by the common law process in the "laboratory of the states." **8**

Allowing the development of different rules in different states teaches us which rules most effectively resolve disputes. To the extent that the conditions that give rise to disputes are the same across the country, the successful rules tend to be copied by other jurisdictions and spread. This creates a fairly uniform body of law. **9** To the extent that the conditions that give rise to disputes are peculiar to a particular location or milieu, they do not spread. This creates a patchwork of rules that are useful where applied, but would be irrelevant or disruptive if applied in other settings.

One of the beauties of the common law process is that it creates a body of law that is uniform where uniformity is useful and diverse where it is not. This is the optimal outcome. Government legislation, in contrast, creates uniformity by imposing ill-fitting, one-size-fits-all rules upon a geographically and ethnically diverse population. Once again, not only is government not necessary to the creation of a well-functioning body of law, it is a significant impediment to it. Please consider this the next time you find yourself wondering why all businesses must be closed on Sunday in the Orthodox Jewish sections of Brooklyn.

To be continued in ***The Obviousness of Anarchy: Accessibility of Rules of Law***

Footnotes:

8 See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

9 Fairly, but not fetishistically. The law against homicide functions quite effectively despite the fact that the definitions of first and second degree murder and voluntary and involuntary manslaughter differ from state to state.

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